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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*

Note by the Secretariat

In the present report, the United Nations High Commissioner for Human Rights commends the peace agreement reached between the Government of Colombia and the Revolutionary Armed Forces of Colombia-People's Army.

He highlights the tasks requested of his Office in Colombia by the negotiating parties to support peacebuilding, including reporting on the implementation of the human rights aspects of the agreement through a special chapter in his annual reports to the Human Rights Council.

In the report, the High Commissioner describes the human rights situation in relation to peace, security, development and democracy. He highlights specific challenges, especially in rural areas, including citizen security, violence linked to illegal economic activities, attacks on human rights defenders, corruption and disparities in the enjoyment of economic, social and cultural rights.

The report includes 15 recommendations.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia**

I. Introduction

1. The United Nations High Commissioner for Human Rights congratulates the Government of Colombia, the Revolutionary Armed Forces of Colombia-Peoples' Army (FARC-EP) and Colombian society for their determination to advance the peace process after half a century of armed conflict. On 26 September 2016, following four years of negotiations, the parties to the conflict signed a peace agreement in Cartagena.

2. In a plebiscite held on 2 October 2016, the vote against the peace agreement prevailed by a margin of 0.43 per cent, with an abstention rate of over 60 per cent. The Government subsequently invited representatives of those who had voted against the agreement to share opinions and suggestions, which were presented to FARC-EP. A revised text was then negotiated, on the basis of which the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace was signed in Bogota on 24 November and approved by Congress on 30 November. The High Commissioner welcomes the innovative nature of the peace agreement and its inclusion of the pre-existing human rights obligations of the State.

3. Given the extensive human rights content of the peace agreement, the negotiating parties requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to support implementation in collaboration with other partners. OHCHR was specifically requested to:

(a) Include a special chapter in the annual reports of the High Commissioner to the Human Rights Council on the situation in Colombia regarding the implementation of the human rights aspects of the peace agreement (point 6.3.4);

(b) Provide partnership on the implementation of chapter 5 of the peace agreement on the rights of victims (6.4.2);

(c) Participate as invitee in the National Commission on Security Guarantees charged with designing and following up on action against criminal organizations (3.4.3);

(d) Provide partnership on the implementation of the points related to individual and collective security guarantees for FARC-EP members (6.4.2);

(e) Participate as permanent invitee in the mechanism responsible for developing and coordinating the strategic security and protection plan for the new FARC-EP political movement or party (3.4.7.4.2);

(f) Provide partnership on the review of the situation of FARC-EP members or collaborators deprived of their liberty (6.4.2);

(g) Collaborate upon request in the verification of the implementation and serving of sanctions handed down by the new transitional criminal justice mechanism (5.1.2, paras. 60 and 62 in relation to 53 (d)).

4. The integrated mandate of OHCHR in Colombia was renewed until 31 October 2019, allowing its 14 field offices to continue to reach remote, hard-to-reach locations affected by violence and armed conflict to monitor and analyse the human rights situation and advise local authorities. OHCHR advises national counterparts for human rights on such issues as citizen security, business, the situation of human rights defenders, prior, free and informed consultation, the fight against impunity, policy on crime, health and education, victims, security sector reform and gender. The present report is based on OHCHR monitoring, analysis and technical cooperation to facilitate human rights improvement across Colombia.

** Circulated in the language of submission and Spanish only.

5. The High Commissioner recalls that his Office in Colombia depends on voluntary contributions to implement its mandate and notes that, while OHCHR has been requested to undertake additional responsibilities under the peace agreement, available resources have not increased.

6. In March 2016, the Government and the organized armed group the National Liberation Army announced a formal agenda for peace negotiations. This dialogue was postponed until 2017 owing to obstacles, including a lack of confidence between the parties, difficulties for the Government in generating greater social and economic inclusion and continued kidnappings by the National Liberation Army. Hostilities between the parties continued to affect civilians.

7. The High Commissioner visited Colombia from 24 to 29 September 2016 to attend the peace agreement signing ceremony and meet with State and civil society representatives, including the private sector, and the United Nations country team. He visited Mampuján, Medellín, Quibdó and Bogotá. During his visit, the High Commissioner reiterated the commitment of OHCHR to the peace process on the basis of human rights.

8. During 2016, the Committee on the Rights of Persons with Disabilities, the Committee on Enforced Disappearances and the Human Rights Committee examined the situation in Colombia.[1]

II. Peace agreement

A. Human rights content of the peace agreement

9. The peace agreement generally complies with the international human rights obligations of Colombia. If implemented diligently, it could guide the State in overcoming structural human rights challenges.

10. The peace agreement contains programmes that promote social welfare, development, the rule of law and democracy — all of which have human rights implications — in five areas: (a) integral rural reform; (b) political participation guarantees; (c) State action against criminal organizations; (d) solutions to the illicit drug problem, combining judicial action against organized crime with a public health approach for consumers, and viable sustainable economic alternatives for crop growers; and (e) actions on the rights of victims of past violations. The agreement also provides for the creation of an integrated transitional justice system comprising a truth commission, a unit to search for the disappeared, a special criminal jurisdiction for peace and reparations.

11. Throughout the peace agreement, the State's obligation to respect, protect and fulfil all human rights is reiterated, particularly in areas most affected by the armed conflict. Furthermore, it includes an intersectional and gender focus, based on the principles of equality and progressive realization. In the agreement, the parties commit to addressing the historic inequality and vulnerabilities suffered by women and girls, the lesbian, gay, bisexual, transgender and intersex population and religious minorities. Following sustained public advocacy, including a recommendation by the High Commissioner, a section on indigenous and the rights of Afrodescendants was integrated. OHCHR welcomes the fact that the agreement also formally excludes any possibility of amnesty or pardon for sexual violence crimes.

12. The peace agreement encompasses security guarantees to prevent criminal violence against FARC-EP members who reintegrate. OHCHR underlines the complementarity between those guarantees and the State's general obligations on the rights and security of the population.

[1] See CRPD/C/COL/CO/1, CED/C/COL/CO/1 and CCPR/C/COL/CO/7.

13. The implementation of the peace agreement can capitalize on existing State structures and initiatives, such as the National Human Rights System,[2] the land restitution and victim reparation process and the National Development Plan for the period 2014-2018.

14. The delayed implementation of the peace agreement due to the plebiscite generated vulnerability, uncertainty and insecurity for the population in conflict zones. It also undermined the trust of FARC-EP members in the peace process.

B. Required confidence-building measures

15. The voluntary recognition of responsibility for past human rights violations contributes to confidence-building in the peace process. In September of 2016, the President of Colombia recognized the systematic persecution and violence previously suffered by members of the political party Unión Patriótica, underlining the State's responsibility to ensure non-repetition. During 2016, FARC-EP recognized responsibility for the practice of kidnapping, the 1994 massacre in La Chinita, Apartadó, the death in captivity in 2009 of 11 Valle del Cauca legislators and the assassination in 2015 of an Afro-Colombian human rights defender. The families of the killed legislators demanded that the State also recognize its responsibility.

16. Nevertheless, challenges remain within the State and FARC-EP concerning the full recognition of their responsibilities for past international human rights and humanitarian law violations, in a manner that satisfies the rights of victims.

17. In order to contribute effectively to non-repetition, the recognition of violations committed by public officials must take fully into account State, political, institutional and individual dimensions. The denial that gross violations were perpetrated by State agents persists in broad official and political sectors, even in cases where the President has officially recognized the responsibility of the State. Ensuring that recognition has a reparatory effect for victims is one of the transcendental political, legal and cultural challenges faced in peacebuilding.

18. FARC-EP requests for forgiveness will only meet their objective once the victims accept them and begin to benefit from broader reparation actions.

19. The separation of children from the FARC-EP, agreed to by the parties, cannot be postponed. On 10 February 2016, the FARC-EP publically confirmed they would end recruitment of children under 18. During the year, the FARC-EP officially separated only 13 children from its ranks. The integrated attention and reparation programme for children under 18 years remains under construction. OHCHR is concerned about allegations concerning the separation of children from FARC-EP ranks without official process.

20. While the peace agreement includes general references to non-repetition guarantees, it does not include provisions on how to make them material. Non-repetition implies structural institutional reforms, with the participation of victims and society as a whole, to ensure respect for and protection and fulfilment of human rights and the enjoyment of a dignified life. For the reintegration of FARC-EP members, non-repetition entails their contribution to improving living standards in communities where they have had a historical presence. Any FARC-EP members involved in crime after demobilization should be processed by the ordinary, not the transitional, justice system.

C. Selected peace agreement aspects for follow-up

21. The High Commissioner identified selected human rights aspects of the peace agreement that will require follow-up.

[2] Available in Spanish from www.derechoshumanos.gov.co/areas/Paginas/Sistema-Nacional-de-Derechos-Humanos-y-DIH.aspx.

22. The central pillar of the peace agreement is its human rights content, which should facilitate complementarity in the implementation of all related aspects. It should also allow for the institutional coordination and coherence necessary to generate structural improvements in the lives of rights holders.

23. The integrated transitional justice system in the peace agreement aims at consolidating peace through the fulfilment of the rights of victims. This requires coordination and coherence between the different system entities and with other national institutions. Effective sequencing in implementation is also essential. Other challenges include the ambiguity and lack of precision in new institutional mandates and legal frameworks, as well as the resource needs, functional overlap and large number of cases to be processed. External challenges to the success of the system include insecurity and the interests of some powerful sectors in avoiding accountability.

24. The peace agreement establishes a two- to three-year time limit for the Attorney General, the military justice system, the Procurator General, the Comptroller General and Congress to present reports on existing investigations into conflict-related crimes to the special criminal jurisdiction for peace. These entities must ensure the quality and comprehensiveness of their reports. This will enable the special criminal jurisdiction for peace to act with celerity in investigations, prosecutions, attributions of responsibility and the establishment of the truth. OHCHR understands that the reference in the peace agreement to "concluded" investigations includes those archived in the ordinary, military and disciplinary justice systems that will assist in identifying cases, patterns and responsibilities for human rights and international humanitarian law violations.

25. The High Commissioner reiterates his previous observations regarding the need for legal, institutional, budgetary and cultural changes regarding the identification, protection and use of and access to State archives to facilitate the work of the transitional justice system.[3] OHCHR welcomes the powers of the Executive Secretary of the special jurisdiction for peace to order the protection of public or private documents related to the conflict. OHCHR reiterates the need to protect entire archives related to past gross human rights violations. Although the peace agreement omits reference to the need for FARC-EP to contribute its archives, those should be included and considered with same criteria as State archives.

26. Previous demobilization and reintegration experiences in Colombia illustrate the vilification and violence that leaders and members of new political organizations can face, as well as the risk of demobilized members engaging in criminal activities. Security and access to dignified living conditions for demobilized men and women is fundamental for peacebuilding. The opportune establishment and effective functioning of security and protection mechanisms for them, and the creation of employment contributing to social infrastructure, can strengthen reintegration.

27. Public participation is a cross-cutting principle of the peace agreement and should guide all phases of implementation. It must not become a mere formality, including in the integrated transitional justice system.

28. The implementation of the peace agreement requires the hiring of numerous staff that should include people from communities affected by the conflict. Involving from the outset the local population and providing visible economic benefits for communities are ways to contribute to the sustainability of peace at the local level. The entire process should be guided by the "do no harm" principle.

29. Political, social and economic inclusion and the empowerment of community leaders are urgently required. Previous experience, such as the "consolidation zones" promoted by the Government over the past decade, demonstrates the importance of ensuring the presence of all institutions, not only the armed forces, as well as community participation without stigmatization.

[3] See A/HRC/31/3/Add.2, paras. 49-51 and 99 (f).

30. OHCHR welcomes the strategy published in November by the Office of the Ombudsperson to promote human rights in peacebuilding and hopes that sufficient resources will be allocated for its effective application. It takes note of the intention of the incoming Procurator General to create a unit for peace and coexistence to follow-up on peace agreement commitments.

D. Peace agreement implementation to date

31. On 13 December 2016, the Constitutional Court ratified the special legislative procedure created to fast-track the approval of laws for the implementation of the peace agreement.

32. OHCHR is concerned about several aspects of a constitutional reform bill [4] applicable to State agents, presented under the fast-track procedure. The bill restricts and distorts the legal framework that judges must apply to alleged human rights violations committed by members of the military or police and does not meet international standards on superior and command responsibility.

33. In the peace Agreement, the definition of "effective control" relating to the criminal responsibility of civilian or military superiors is partial and not in accordance with international standards. Effective control, as well as the scope of amnesties, should be interpreted in line with international standards and jurisprudence in order to ensure victims' rights to justice and non-repetition. The Prosecutor of the International Criminal Court could offer clarity publicly about applicable superior responsibility norms.

34. On 30 December 2016, Law 1820 on amnesties, pardons and special criminal treatment was approved via fast-track. It includes abstract references to the rights of victims without establishing mechanisms or procedures for their realization. It also reveals dispositions, ambiguities and gaps that do not meet international standards and that undermine the centrality that the Government and FARC-EP have previously given to victims' rights. The High Commissioner is extremely concerned that, if not addressed, these factors may contribute to impunity for perpetrators of gross human rights and international humanitarian law violations.

35. Law 1820 formally prohibits the granting of amnesties or pardons for grave violations of human rights or international humanitarian law. Nevertheless, it foresees a conditional release programme for State officials and FARC-EP members who have been deprived of liberty for five years or more, without taking into account the gravity of their crimes. The High Commissioner laments that, under the rule of law, an independent and impartial entity, unrelated to the potential beneficiaries of release, was not assigned with proposing those public officials to be considered for conditional release. In addition, the law does not establish objective rights-related criteria to evaluate eligibility. Furthermore, it does not provide for an effective system to monitor and control the thousands of potential beneficiaries in order to prevent obstruction of justice and intimidation of victims and witnesses.

36. No provisions have yet been proposed to regulate the vetting of public officials linked to gross human rights violations.

37. At the end of 2016, the temporary pre-grouping zones for FARC-EP members to undergo disarmament and reintegration had not been readied. This generated mistrust and vulnerability among FARC-EP members and provided an incentive for desertion or joining criminal groups. Clearly defined schedules, actions and responsibilities for successful reintegration with public participation are required.

38. Implementing the peace agreement requires significant resource investment. Funding should be planned with a rights-based approach in order to generate sustainable results for communities. By the end of 2016, budget planning for implementation remained at a preliminary phase.

[4] Bill 002 of 2016, Lower House of Congress.

III. Human rights in peace, security, development and democracy

39. OHCHR identified the below structural human rights situations, challenges and opportunities, which require attention in order to strengthen peacebuilding, particularly in rural areas.

A. Rural challenge

40. In certain rural areas, FARC-EP has for decades imposed its control on the population. With their withdrawal from these areas into temporary grouping zones, the risk of violence surrounding illegal economic activities has increased. Before new forms of illegitimate control by third parties consolidate, it is necessary to strengthen the integrated presence of civilian authorities and fully enact their responsibilities to respect, protect and fulfil the entire spectrum of human rights of the rural population.

41. Current State initiatives to strengthen justice in rural areas with an intersectional and gender focus, community participation and full institutional accountability at each phase, will be essential to generate political, social and economic inclusion. Only through the effective recognition and strengthening of the role of indigenous peoples and their authorities, as well as Afrodescendent communities, women and rural leaders, can good governance be ensured and the emergence of power vacuums prevented.

42. Regarding violence and crime in rural areas, OHCHR continued to observe difficulties in gaining access to justice. The staff of the Office of the Attorney General faced ongoing difficulties in reaching remote areas to fulfil their functions. The excessive number of investigations assigned to each prosecutor, security considerations, scarcity of investigators and transport difficulties hampered investigative progress.

B. Violence and illegal economic activities

43. OHCHR observed the relationship between violence, the areas where coca, marijuana and poppy is grown, drug trafficking and illegal mining activities, for example, on the Pacific Coast and in Bajo Cauca and Catatumbo. These areas also often have a history of land theft. Such violence increased as FARC-EP initiated demobilization.

44. Actors linked to organized crime — including transnational crime — and local crime, as well as FARC-EP dissidents and the organized armed groups the National Liberation Army and Popular Liberation Army, have competed to control, exploit and profit from illegal economic activities. The prevailing poverty, marginalization and lack of opportunities in these mostly rural areas, in addition to weak State presence and corruption, have facilitated the development of illegal economic activities. The resulting violence has affected communities, their leaders and local authorities.

45. State responses to violence should address structural factors that favour illegal economic activities, particularly corruption, in order to ensure enjoyment by the population of the totality of rights. National and local coordination to ensure effective social, community and situational crime prevention, as well as community participation in decisions affecting them, should be ensured.

C. Economic, social and cultural rights

46. Colombia, a middle-income country, is among the five countries with the highest levels of inequality in the region.[5] This is visible in the disparity in enjoyment of economic, social and cultural rights between rural and urban areas and within urban areas. In rural areas, the principal obstacles for human rights enjoyment, identified jointly with the Government, include: limited local State presence and capacity; ineffective national-local

[5] See http://repositorio.cepal.org/bitstream/handle/11362/39965/4/S1600175_es.pdf.

coordination; armed conflict; limited access to justice; corruption; insufficient integration of rights into public policy planning, implementation and evaluation; insufficient measurement of progressive realization; and limited accountability. The peace agreement, particularly the points related to integrated rural reform and the solution to the illicit drug problem, provides the opportunity to meet these challenges in a holistic manner. Addressing economic, social and cultural rights would help overcome violence and exclusion, and enhance the exercise of civil and political rights.

47. In previous reports on the situation of human rights in Colombia, the High Commissioner reiterated the obligation of the State to adopt measures for the equal enjoyment of economic, social and cultural rights and to develop indicators to evaluate their progressive realization. Existing measurement tools of the National Human Rights System must be refined to enable the State to appraise the current situation in order to strengthen public policy implementation. The Department of Social Prosperity, with OHCHR support, is piloting a mechanism to monitor policies and programmes for the Wayúu indigenous peoples' right to food and water.

48. OHCHR continued to observe difficulties in implementing economic, social and cultural rights, for example in La Guajira, where nutritional problems primarily affect indigenous Wayúu children. In that department, between January and November 2016, the National Health Institute reported 352 cases of children with low birth weight and 75 deaths from malnutrition, 16 per cent of them under 5 years of age. There is underreporting as no precise census data about the Wayúu population exists, and there are significant disparities between departmental and calculations by national authorities. The Government is implementing a range of initiatives to overcome this situation, the impact of which will require regular evaluation.

49. Investigations by the Attorney General into the situation in La Guajira described in the 2015 annual report of the High Commissioner[6] continued to reveal irregularities in State contracting for education, health, early childhood attention, aqueducts and other public works. In October, the Attorney General indicated that corruption in La Guajira was systematic and announced he had brought charges against 41 people. OHCHR hopes that the diligent investigation in La Guajira continues and is replicated in other parts of the country where corruption also undermines State efforts on the enjoyment of economic, social and cultural rights. Considering that the Office of the General Comptroller has published audit reports regarding this situation since at least 2011, OHCHR highlights the importance of greater coordination between oversight and justice institutions.

50. With respect to the right to health, challenges persist regarding the fulfilment of minimum standards of availability, accessibility, acceptability and quality in many rural areas, especially where indigenous peoples and Afrodescendants reside, including Amazonas, Antioquia, Arauca, Caquetá, Chocó, La Guajira and Putumayo. In some parts of the country, OHCHR continued to observe repeated delays of up to six months in salary payments for health personnel.

51. OHCHR observed the impact of water source contamination due to illegal mining on the health of indigenous communities along the Caquetá River in Caquetá and Amazonas. In addition, OHCHR verified the irregular access to vaccinations for children despite vaccination schemes foreseen in national legislation. Improvement in statistical information quality about the health situation is required.

52. In Chocó, Afrodescendent and indigenous children continue to die from preventable diseases owing to the limited availability and accessibility of health services and the absence of clean drinking water and basic sanitation. In Riosucio alone, the deaths of nine children were reported between January and August 2016. According to the Ministry of Health, the maternal mortality rate in Chocó is 181.64 deaths per 100,000 live births, compared with 33.70 in Bogota. The under 5 mortality rate in Chocó is 31.86 deaths per 1,000 live births, compared with 11.75 in the capital. Between January and November

[6] See A/HRC/31/3/Add.2, para. 77.

2016, the Government registered 20 deaths from malnutrition in Chocó. Thirty-five per cent of the victims were under 5 years of age.

53. In 2012, in the context of the Millennium Development Goals, Colombia reported gross primary education coverage of 111 per cent. Nevertheless, the enjoyment of the right to universal and free education, particularly in rural areas, continued to be hampered by obstacles causing school drop-outs, including the presence of anti-personnel mines. OHCHR observed that attendance in the Valle del Guamuez (Putumayo) and Tumaco (Nariño) municipalities was impeded by lack of drinking water and electricity in schools, limited roads and transport and the inability of many families to afford school supplies, uniforms and food.

D. Human rights defenders

54. The situation of male and female human rights defenders continued to cause concern in 2016. Over the entire year, OHCHR registered 389 aggressions, including: 59 killings;[7] 44 attacks; 210 threats, 69 of which were collective; 72 infringements of the rights to privacy and property, including photographing, surveillance and computer theft; 3 enforced disappearances; and 1 case of sexual violence. The 59 victims killed included 4 women, 6 indigenous leaders, 3 leaders of lesbian, gay, bisexual, transgender and intersex groups, 3 trade union leaders, 1 Afro-Colombian leader and 2 leaders of youth groups. Although more attacks against and assassinations of members of trade unions and social and political movements took place, the statistics above only include aggressions against leaders.

55. The departments with the highest numbers of verified killings of human rights defenders were Cauca (14), Antioquia (7), North Santander (6) and Córdoba (4). The departments most affected by all types of aggressions were Cauca, Bogotá, North Santander, Valle del Cauca, Meta and Antioquia.

56. As regards the perpetrators of the above-mentioned 59 verified killings, 44 (or 74.5 per cent) appeared to be linked to groups or individuals with criminal interests; 4 to the National Liberation Army; 1 to the Popular Liberation Army; 2 to FARC-EP militias; 1 to FARC-EP dissidents; 6 to private actors; and 1 to the national police during a social protest.

57. In the above-mentioned cases of verified killings, 43 (or 73 per cent) of the victims were active in rural areas. Of those, 25 were killed in areas with a historical FARC-EP presence. By contrast, in 2015, OHCHR registered 25 killings in rural areas. That increase is related to power vacuums being left by FARC-EP; scarce or ineffective State presence; the perception by criminal actors that human rights defenders are obstacles to their interests; the persisting stigmatization of human rights defenders; the resort to violence to resolve disputes among community members; competition among criminal groups to control illegal economic activities; and limited access to economic, social and cultural rights.

58. OHCHR registered 11 cases of arrest and detention of human rights defenders in rural areas with the presence of armed actors. It has reported annually on how such arrests often lead to prolonged detentions before the defender is released, owing to a lack of evidence. This casts doubt upon the diligence, legality, impartiality and independence of investigations. A review of the situation is required, involving the Counter-Terrorism Department of the Office of the Attorney General, to examine how military intelligence is used to generate criminal investigations.

59. Convicting those who attack human rights defenders is a fundamental and effective safeguard for satisfaction and non-repetition. OHCHR has reiterated its concern about the high level of impunity for aggressions against human rights defenders. While valuing various initiatives of the Office of the Attorney General in recent years in this area, the High Commissioner notes that such efforts must generate further results. The success of the Office should be measured by the quality of its investigations and its capacity to achieve

[7] Four additional killings are still being verified.

effective prosecutions. Given the complexity of investigating aggressions against human rights defenders, OHCHR considers that the adjustment of institutional incentives to reward prosecutors for investigative advances in these cases could have positive effects.

60. OHCHR welcomes the six convictions by the Office of the Attorney General in 2015 and 2016 against perpetrators of killings of human rights defenders. Twelve additional cases are at trial, pending judicial decisions.

61. The new Directive 011 on the investigation of threats against human rights defenders, Memorandum 00042 on the investigation of crimes against vulnerable groups including defenders and a protocol on rapid response to killings and threats against defenders are promising and should be applied diligently.

62. OHCHR notes the progress achieved by the Attorney General in the context of dialogue between the Government and civil society, known as the national round-table on guarantees, in identifying cases of killings of human rights defenders since 1994. Of the 766 cases identified to date, the Office of the Attorney General must still locate 193 cases in its registry following changes in its information management systems since 2004. The institutions participating in the round table should ensure that their representatives have decision-making authority and should report on concrete advances in implementation and impact, rather than only on the promotion of policies, initiatives and campaigns.

63. OHCHR acknowledges the ongoing efforts by the National Protection Unit to respond to the numerous and varied protection needs across Colombia. However, and in spite of the large numbers of soft protection measures granted in rural areas, it is yet to evaluate the appropriateness and effectiveness of its protection measures for rural human rights defenders. On the basis of the information available, the Office observes that, despite the increase in killings of these defenders, only 20 per cent of hard protection measures were allocated to rural areas. Furthermore, OHCHR notes the need to ensure that analysts from the National Protection Unit can reach human rights defenders in rural areas to interview them in accordance with established procedures.

64. Preventive actions by civilian institutions, in relation to attacks against human rights defenders, remained a key challenge. OHCHR and the United Nations Development Programme support prevention mechanisms created by the Government, including the Ministry of the Interior's territorial round-tables for preventing attacks against human rights defenders, and the Human Rights Subcommission of the Agrarian, Campesino, Ethnic and Popular Summit, which receives cases of alleged attacks and verifies them in situ.

E. Citizen security

1. Citizen security for peace

65. In the context of the peace process, the High Commissioner observes with concern the intervention of the military in citizen security tasks, ranging from managing public protests to combating organized crime. OHCHR reiterates that the military is not responsible for citizen security. Constitutionally, it has the mission of defending sovereignty, independence, national territorial integrity and the constitutional order. The police has the responsibility of maintaining the conditions necessary for the exercise of rights and liberties. In exceptional situations and under established procedures, the national police may require military assistance, which, in order to respect life and integrity, should be conducted under the principle of police primacy with rigorous independent civilian oversight. This constitutional division of functions reflects international and regional human rights standards.

66. Current plans, protocols and other procedures justifying the role of the military in public security do not adequately reflect such international and regional human rights standards or the Constitution and law, including the new National Police Code. This is the case, for example, for Ministry of Defence Directive 15 of 22 April, which refers to "organized armed groups" — a term of international humanitarian law that must be determined objectively — to refer to criminal groups, including organized criminal groups defined under the United Nations Convention against Transnational Organized Crime,

which the State must respond to within the framework of international human rights law, rather than under international humanitarian law. This places the human rights of the population at risk by promoting the lethal use of force in situations and conditions in which it is not legitimate under the rule of law.

67. Furthermore, OHCHR is concerned about proposals by some local authorities to create vice-mayors for security, and for such roles to be exercised by active military personnel on commission. This would assign to military personnel functions and responsibilities for which their training and doctrine is not applicable according to the Constitution, jurisprudence and international standards.

68. OHCHR considers recent institutional initiatives against military and police corruption to be positive. Corruption within the police is more visible given its daily contact with the population. The example, commitment and leadership of superior officers in those institutions, as well as rigorous external oversight, can enhance the impact of institutional anti-corruption policies. The visibility of corruption cannot be a justification for distorting the constitutionally assigned functions of security sector institutions.

69. To assume fully its constitutional mission in the post-conflict context, the police, in addition to addressing corruption forcefully, must reinforce its institutional human rights culture. OHCHR and the General Inspector of the police have jointly identified gaps in police training, the functioning of internal control mechanisms, and command and control. Openness and transparent dialogue with civil society in that process would be beneficial. The expansion and deployment of *carabineros* (rural police) to ensure public order in rural areas is urgent to reinforce the sustainable deployment of all civilian institutions. OHCHR has shared international experience from other peace processes on reorienting and strengthening the security sector. The recruitment, training and deployment of new police officers — male and female — in conflict-affected zones is required.

70. OHCHR is concerned about the situation of a police captain who denounced human rights violations and other irregularities within the institution. His and other cases in other institutions illustrate the need to strengthen protections for whistle-blowers across the State, in line with international anti-corruption standards.

71. OHCHR laments that, despite the need to distribute limited public resources in an effective and efficient manner in the context of the peace process, and given the need for the police to have the resources necessary to assume fully its post-conflict role, the Ministry of Defence decided at the end of 2016 not to reassign financial resources from the military to the national police.

2. Extrajudicial executions in 2016

72. OHCHR documented six cases of arbitrary deprivation of life in 2016 perpetrated by members of the army or police in Bolívar, Norte de Santander, Cesar, Nariño and Antioquia. One victim was a girl. One killing occurred during joint police-military operations against illegal mining, another during a military operation against the National Liberation Army and another in a military anti-kidnapping operation. Three cases involved police agents during social protests or at checkpoints.

73. Contributing factors behind the cases relate to operational planning to fulfil rights, applicable protocols about the use of force in urban and public areas, command and control, and tactical discipline. The risk of arbitrary deprivation of life is accentuated when the military is involved in tasks that do not correspond to its constitutional mission.

F. Extrajudicial executions of the past

74. In April and July 2016, the State Council declared the aggravated State responsibility in and condemned the Ministry of Defence, national army and national police for multiple acts, including the systematic and generalized extrajudicial executions known as "false positives". It indicated that the crimes revealed structural failings and inadequate controls within the military in recruitment and discipline, and in the functioning and exercise of institutional responsibilities.

75. OHCHR had previously documented challenges of institutional will to ensure the effectiveness of internal military controls regarding "false positive" cases. This was evident, among other factors, in the approval of payments to false informants, and inappropriate institutional incentives and pressures for military "results".

76. OHCHR welcomes the order by the State Council that the military develop, as a non-repetition guarantee, integrated intelligence plans to control its members. Policies should be reviewed and strengthened in the light of this judicial decision and of the reports on (a) the "15 measures" military internal controls produced in 2013 by OHCHR, the Ministry of Defence and the General Command; and (b) the five human rights internal control mechanisms in the police developed in 2015 by OHCHR and the national police Inspector General.

77. OHCHR lauds the precedent-setting public act by the Minister for Defence and Army Commander in recognizing an army sergeant as a national hero for having demonstrated leadership, honour and military loyalty by denouncing, since 2007, extrajudicial executions committed by certain comrades and superiors. For nearly 10 years, the officer had suffered reprisals, the denial of State protection and vilification by senior members of the institution. The case illustrates the need to generate the conditions necessary for security sector officials to participate freely in transitional justice mechanisms.

78. OHCHR recognizes the work of prosecutors committed to the investigation of "false positive" extrajudicial executions. According to the Office of the Attorney General, in the context of the 2,316 open investigations as at 31 December 2016, 133 members of the military and civilians had been convicted between January and September. OHCHR observes that the Office of the Attorney General reported various different statistics regarding these processes.

79. Nevertheless, taking into account patterns in the planning, commission and cover-up of "false positive" killings, the responsibility cannot be limited to the material perpetrators. Only 1 of the 14 army generals currently investigated for such acts has been called to trial. The Attorney General should prioritize the investigations of those and other commanders. In accordance with the public reports of the Prosecutor of the International Criminal Court, OHCHR calls upon the State to ensure the provision of complete and pertinent information to the Court about investigative advances against superior officers in "false positive" cases.[8]

80. The fight against impunity is not limited to criminal procedure. OHCHR observed with concern the closing of disciplinary investigations of senior commanders with respect to "false positive" cases that had exceeded the statute of limitations, given the lack of action on the issue by the previous Procurator General in recent years.

81. In November 2016, five senior officers implicated in the "false positive" extrajudicial executions committed by soldiers under their command, and who had received various benefits for these "results", were promoted to the ranks of brigadier general and major general. The Government and Congress justified their decision on the absence of criminal sentences against the officers, ignoring that such political and administrative responsibilities cannot be contingent on the existence of a judgment determining individual criminal responsibility. Based on the international obligations of Colombia, such decisions should integrate human rights criteria.

G. Intelligence sector reform

82. The peace agreement underlines the role of intelligence in addressing criminality. However, the military, civilian and police intelligence reform process established in the Intelligence Law (2013) has not advanced at the rate required for peacebuilding and in a

[8] See Prosecutor of the International Criminal Court, "Report on Preliminary Examination Activities", 2016, available from www.icc-cpi.int/iccdocs/otp/161114-otp-rep-pe_eng.pdf, paras. 241 and 252; and 2015, available from www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf, paras. 158 and 164.

manner that allows the public to be assured that the human rights violations of the past will not be repeated.

83. The peace agreement reiterates the obligation to "purge" national security archives, including intelligence archives, of information about human rights defenders, members of the opposition and members of the new FARC-EP political movement, when there is no legitimate reason for their inclusion. In July, the Inter-Institutional Commission on Intelligence Data and Archive Purging submitted a report that included recommendations on criteria for keeping, withdrawing and storing intelligence information delivered to the Presidency, which OHCHR considers should be publicly debated prior to initiating "purging" within one year. In the report, the Commission emphasized the need to create an autonomous mechanism with powers to review and declassify intelligence information on human rights grounds. The Government informed OHCHR that the military had been "purging" information from its archives. It is of concern that this has been done prior to the approval and formalization of the recommendations of the above-mentioned Commission, generating a risk that evidence of human rights violations may have been destroyed.

84. OHCHR and the Human Rights Committee have emphasized that the Government must clarify the scope and regulation of the power to monitor the electromagnetic spectrum foreseen under the Intelligence Law and the new Police Code to ensure the legality, proportionality and necessity of data collection about individuals and public acceptance of such power.

H. Political participation

85. The plebiscite on the peace agreement illustrated the long-standing structural difficulties that the rural population continues to face in exercising freely the right to vote in all electoral processes. The cost and arduousness of travelling to voting stations are a disincentive for those living in rural and hard-to-reach areas. This is exploited during all periodic elections by candidates and parties who seek to influence the vote by offering to finance transport, accommodation and other expenses. The representative in Colombia of the High Commissioner addressed Congress and the Ministry of the Interior on the need to address this situation.

I. Land restitution

86. The land restitution process initiated in 2011 offers important experience and lessons for the peace process. OHCHR suggests that an evaluation of its successes and difficulties could usefully guide State action.

87. The security of land restitution claimants remained a challenge as they faced aggressions and vilification, for example, in the Catatumbo, Urabá, Meta and the Pacific Coast regions. Illicit economic activities, organized crime and weak State presence in those areas exacerbated risks for claimants.

88. The State made progress in protecting the rights of those people currently occupying lands, who are to receive restitution and who are not linked to previous land theft ("good-faith secondary occupants") in the context of land restitution through a decision of the Constitutional Court and administrative measures.[9] Political, social and economic actors, however, continued to misinform those secondary occupants about their rights and the land restitution process in order to impede restitution.

J. Forced displacement and humanitarian emergencies

89. Despite the peace process, forced displacement continued. The United Nations High Commissioner for Refugees reported that 47 emergencies stemming from new massive

[9] Sentence C-330/16 and Agriculture Ministry Decree 440 of 2016.

forced displacements, confinements and/or mobility restrictions had occurred in 2016. These were concentrated in hard-to-reach areas in Córdoba, Antioquia, Chocó, Valle del Cauca, Cauca, Nariño, Arauca and Norte de Santander. They primarily affected Wounnan, Emberá and Emberá Dovida indigenous, Afrodescendent and campesino communities. Approximately 13,864 people had been affected by mass displacement. In a high percentage of cases, displacement had related to recurrent emergencies in which institutional efforts had not been able to mitigate causes relating to the hostilities or violence.

90. OHCHR welcomes decision 373 of 2016 of the Constitutional Court, in follow-up to Sentence T025 of 2004 regarding forced displacement, which declared that the "unconstitutional state of affairs" regarding victim registration and participation had been resolved, with the exception of indigenous and ethnic populations. Nonetheless, other aspects of the unconstitutional situation regarding displacement, including prevention, protection, education, justice and non-repetition, are yet to be fully resolved.

K. The rights of victims

91. There is a need to strengthen coordination among and the effectiveness of the entities comprising the National System on Victim Attention and Reparation. Coordination is also necessary between those entities and new transitional justice institutions.

92. OHCHR observes that the collective reparations process for the 2002 massacre in Bojayá, Chocó, illustrates the relevance of current State efforts to overcome internal resource and coordination challenges which generate contradictions and delays.

L. Business and human rights

93. OHCHR welcomes business initiatives supporting peace, the integration of human rights into business practices and the implementation of due diligence guidelines. In November, for example, the Government, businesspeople, former combatants and victims participated in a reconciliation process known as "Macrorrueda". Associations such as ProAntioquia have explored initiatives to ensure that business visions and activities improve the social and economic contexts where they operate. OHCHR facilitated exchanges between Colombian businesses and their counterparts in Northern Ireland and Spain (Basque Country) on private sector contributions to peacebuilding. The implementation of the Business and Human Rights National Action Plan (2015) should continue.

94. Despite these efforts, OHCHR continued to observe socioenvironmental conflicts related to large-scale, principally extractive, economic projects. In order to contribute to resolving such conflicts, OHCHR facilitated and/or supported dialogue between businesses and communities in Tolima, Putumayo, Meta, Huila, Guajira, Caquetá and Antioquia.

95. OHCHR welcomes the 19 August 2016 decision of the Constitutional Court, in which it indicated that mining affected the interests of municipalities and therefore municipal authorities and populations should participate in decisions on mineral extraction.

96. As reflected in the peace agreement, peacebuilding requires the establishment of the truth about the role that the private sector and other civilian actors played in the past in financing or supporting paramilitary groups.

M. Sexual and gender-based violence

97. Sexual and gender-based violence is endemic, occurs in all aspects of the life of the population and transcends the armed conflict. The High Commissioner calls for the implementation of his previous recommendation in this regard.[10] Despite underreporting of

[10] See A/HRC/31/3/Add.2, para. 99 (k).

gender-based violence, the Government has estimated that the average age of female victims of sexual violence is 13. Discrimination, socioeconomic dependence and disempowerment of women facilitate this violence and related impunity.

98. Regarding implementation of the Law on Access to Justice for Victims of Sexual Violence, OHCHR observed, for example, that in 15 cases in Putumayo, the institutional response system was not activated correctly and that certain actions generated re-victimization. In various regions, the psycho-legal assistance personnel foreseen under the law were unavailable.

N. Children

99. OHCHR observed the involvement and use of children by post-demobilization groups linked to organized crime, including in Antioquia, Chocó and Valle del Cauca. Girls in particular were victims of sexual violence, commercial sexual exploitation and trafficking. The National Liberation Army continued to recruit children in the context of the armed conflict. Families fled their homes to avoid the use or recruitment of their children.

100. In February, the Constitutional Court ordered that girls and boys separated from criminal groups should have the same access to restitution mechanisms as those separated from FARC-EP, the National Liberation Army and the Popular Liberation Army.

O. Indigenous peoples and Afrodescendants

101. Since the 2004 declaration by the Constitutional Court[11] of an "unconstitutional state of affairs", including a disproportionate impact of the armed conflict on the indigenous and Afrodescendent population, greater attention has been paid to their situation. Nevertheless, there has not been sufficient progress in the implementation of the decision, particularly in relation to the extraordinary territorial protection measures ("ruta étnica de protección"). The rights of indigenous and Afrodescendent populations, including to prior, free and informed consultation, are often portrayed as obstacles to progress instead of a means for promoting sustainable development and peace. In various situations, some State officials continue to fail in practice to treat the constitutionally recognized indigenous authorities as part of the State and to respect their right to self-government.

102. During 2016, the Constitutional Court issued judgments[12] highlighting the tension between mining as a central element of governmental development plans and concerns over the environmental impact of mining, which disproportionately affects indigenous and Afrodescendent populations.

P. Social dialogue and democracy

103. The recent use of social dialogue between the State and different rights-holding communities or sectors has increased, especially in response to social protests. OHCHR reiterates the utility of dialogue, consensus-building and follow-up as tools for democratic participation in governance in order to facilitate action on societal concerns.

104. The implementation of agreements reached through social dialogue requires adequate resources and accountability systems. Governmental non-compliance in the context of social dialogue has generated a loss of trust, credibility and valuable opportunities for progress. This is particularly clear in relation to coca, marijuana and poppy substitution and the transformation of illegal mining, where the parties in dialogue demonstrated genuine commitment to overcoming problems but did not reach agreement.

105. OHCHR observed that, on occasion, social dialogue has been used to address issues beyond its capacity and function, as a complementary participation mechanism. This

[11] Sentence T-025/04.

[12] For example, C-273-2016, C-035-2016 and C-389-2016.

reflects the population's lack of confidence in its elected representatives' commitment to channel and represent its interests at the local and national levels, as well as weaknesses of many local institutions. Addressing this aspect of the quality of the democratic system is central to peacebuilding.

IV. Recommendations

106. **The United Nations High Commissioner for Human Rights reiterates the recommendations he made in his previous reports and:**

(a) **Urges State entities to implement all aspect of the peace agreement based on international human rights standards, and calls on the State and FARC-EP to recognize fully their responsibility for serious violations of human rights and international humanitarian law, in order to generate effective reparations processes based on consensus with victims;**

(b) **Calls on the State and FARC-EP to ensure non-repetition of the violations of human rights and international humanitarian law that have characterized the armed conflict, including by prioritizing a gender approach; the best interests of the child, particularly in separation processes from FARC-EP; meaningful participation of victims and the public; progressive realization of economic, social and cultural rights through rural reform; superior responsibility for serious human rights and international humanitarian law violations; the search for the disappeared; the fight against impunity for conflict-related sexual violence; limits and regulations for the concession of amnesties, pardons and special measures; full respect, protection and fulfilment of the rights of indigenous and Afrodescendent populations; and redoubled efforts to end forced displacement;**

(c) **Urges State entities to include victims in their planning and budgeting to design flexible mechanisms for implementation at the local and national levels, and to ensure full periodic budgetary and results-based accountability and transparency on all actions. National oversight mechanisms, including the Office of the Procurator General, should be developed and act to reinforce government action in favour of the rights of victims;**

(d) **Calls on the State to ensure an effective protection and incentives system for public officials to participate freely in transitional justice mechanisms;**

(e) **Exhorts the State to design and implement, with public participation, the strategic, institutional, budgetary and operational changes to guarantee citizen security in rural areas, in accordance with international standards and the Constitution;**

(f) **Encourages the Government and the National Liberation Army to advance on a negotiated solution to the armed conflict, respecting human rights and international humanitarian law to build confidence with each other and the population;**

(g) **Recommends that the Ministry of the Interior, the Office of the Attorney General, the national police, the National Protection Unit and regional and local authorities meet, in a coordinated manner, the political and technical commitments agreed with human rights defenders with respect to prevention, protection and investigation. On a political level, the culture of vilification of human rights defenders that persists in some sectors should end. On a technical level, joint situational analysis should be conducted to identify and prosecute perpetrators of attacks;**

(h) **Insists that all use of force by the State is carried out under international human rights law, except for actions against guerrilla groups that are objectively classified as organized armed groups, and to which international humanitarian law is applicable. Any lethal use of force should be accompanied by full public accountability;**

(i) Urges the State to address the obstacles that impede or condition rural participation in electoral processes;

(j) Invites the State to initiate a public process, led by the Office of the Presidential Advisor on Human Rights, of discussion and accountability on the progress and difficulties in the implementation of the Intelligence Law to revitalize rights-compliant intelligence reform efforts;

(k) Encourages the State to prioritize its efforts to prevent, prosecute and sanction corruption in public institutions in order to reinforce human rights, development, democracy and peacebuilding;

(l) Encourages the private sector to develop further business activities that contribute to improving living conditions in areas affected by conflict, violence and poverty;

(m) Recommends that the State ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(n) Recommends that the international community ensures that its financial and technical support to the peace process contributes to improving the enjoyment of human rights, and that its impact is regularly evaluated;

(o) Proposes that the United Nations system in Colombia, as part of its application of institutional human rights policies, including the Rights Up Front Initiative, create a coordination mechanism with OHCHR for the inclusion of a special chapter on the implementation of the peace agreement in the annual reports of the High Commissioner to the Human Rights Council on the situation of human rights in Colombia.